

Opinion No. 14-1261

June 29, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable C. W. G. Ward, District Attorney, Las Vegas, New Mexico.

BRIDGES.

Regarding the levying of taxes for the building of bridges.

OPINION

{*120} I have received your letter of the 27th instant, inclosing another from the Commissioners of Guadalupe County and a copy of your {*121} answer thereto. The principal question considered in your answer to the County Commissioners as to which you desire my view, as I understand it, is the limitation on the amount of tax which can be levied under the provisions of Section 4 of Chapter 32 of the Laws of 1913 for the purpose of paying for bridges. It appears that under the contract contemplated or made by the County Commissioners it will be necessary for the county to pay \$ 30,000.00 for bridges during a period of three years, and the doubt which you express is as to whether in substance the tax to be levied may be sufficient to raise the sum of \$ 10,000.00 every year, or must be limited to a levy which would produce that amount every year if it were all collected, experience having shown that only about eighty per cent will probably be collected. I assume that Guadalupe County falls in Class B.

The first impression which one would have upon reading Chapter 32 of the Laws of 1913 is that the legislature intended to enable the counties of Class B to raise the sum of \$ 10,000.00 per annum to pay for the bridge or bridges contemplated by that statute, and I believe that a careful examination of the statute, and a comparison with the earlier act of 1899 will justify a conclusion that the first impression is correct.

In Section 4 of said Chapter 32 the board of county commissioners is directed to "make, levy and assess a tax upon all taxable property in such county in the amount deemed proper for the construction of such bridge or bridges." If that were all there could be no doubt that the levy to be made was committed entirely to the discretion of the board of county commissioners, but there follows a proviso "that no tax shall be levied in any county in any one year in excess of the following amounts," among which is the sum of \$ 10,000.00 for counties in Class B.

Section 5 of the act prohibits the county commissioners from entering into a contract for the construction of a bridge or bridges "requiring the expenditure of more than three times the limitation of the annual levy provided for in Section 4 of this act." This section indicates that the legislature intended that there might be an annual expenditure up to the full amount of \$ 10,000.00 in counties of Class B, and in order to reach that limit it

would be necessary to levy the tax at a higher rate than that which would produce \$ 10,000.00 if collected in full, if there is a certainty that the collections will not be in full.

In addition to this, examination of Chapter 11 of the Laws of 1899 will show similar limitations as to the tax levy, with an additional provision that no contract should be made in excess of the limitation for the annual levy and in the event that annual levy does not produce the required sum, then authority was given to levy and collect the deficiency bridge tax in the next annual levy of the board. In the act of 1913 there is no provision for the levy of a deficiency tax, and this omission of what had been contained in the original act of 1899, emphasizes and corroborates the correctness of the view that the legislature intended to enable the counties of Class B to raise \$ 10,000.00 a year to be paid by three annual taxes which taxes must of necessity be made at such a rate as will produce the required sum.

{*122} I return herewith the original letter from the county commissioners, which you sent, together with the copy of your answer thereto as that may be your only retained copy.